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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
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Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Working paper submitted by Mr. S. Chernichenko

1. The development of international cooperation in the field of human rights requires further improvement of the international legal basis for such cooperation. In particular, this is necessary in order to enhance the effectiveness of efforts to combat human rights violations. If gross and large-scale human rights violations committed on the orders of a government or with its sanction were considered to be international crimes, this could play an important role in combating such violations.

2. As is well known, international crimes are violations of international law committed by a State that threaten the entire international community. No universally recognized list of international crimes exists, although the International Law Commission has carried out considerable work with the aim of defining which State actions could be classified as international crimes. At the same time, it is clear that such State actions as aggression, genocide and apartheid are considered by the international community as international crimes.

Mass killings, executions and torture carried out by the authorities of a State by no means always fall under the definition of genocide, but they nevertheless constitute a danger to mankind.*

3. Considering gross and large-scale human rights violations committed or sanctioned by a Government, i.e. in the name of a State, to be an international crime makes it possible to raise not only the question of the gravest international responsibility of the State itself, but also that of national and international criminal proceedings against those acting de jure or de facto on its behalf. In other words, criminal proceedings should be brought against persons who have used the State as an instrument for committing an international crime. Such actions by individuals are customarily termed (after the Judgment of the Nürnberg Tribunal) crimes against international law. This very category of crimes is dealt with in the draft code of crimes against the peace and security of mankind, which is under consideration by the International Law Commission. However, the draft code contains no reference to individual responsibility for participation in the perpetration of gross and large-scale violations of human rights. The probable explanation is that such violations, when committed on behalf of a State, have not yet been acknowledged to be international crimes.

4. Gross and large-scale human rights violations committed in the name of a State could be categorized as international crimes in a declaration adopted by the United Nations General Assembly. A start could be made on drafting such a declaration in the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The declaration should not contain detailed provisions, but should merely set forth general principles. If it is adopted by consensus, it will have a very great moral and political impact. Furthermore, as experience shows, declarations adopted by consensus can progressively come to form part of international custom or the basis for international treaties.

5. The declaration should be short, consisting of three or four articles. The first article should set forth the fundamental principle that gross and large-scale violations committed on the orders of or with the sanction of a government constitute international crimes. The subsequent articles could be devoted to the responsibility of the State in whose name such violations have been committed, and that of the persons who have organized or directly committed such violations.

The preparation of such a brief declaration would not seem to require any research entailing financial consequences. A draft could easily be prepared as a basis for consideration at the next session of the Sub-Commission. Naturally, this would not exclude further thorough work on it in the Sub-Commission, the Commission on Human Rights, and so on.

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* Under the 1948 Convention, genocide means killing and other acts committed with intent to destroy any national, ethnical, racial or religious group, as such.